

CENTER FOR DISABILITY ACCESS
Ray Ballister, Jr., Esq., SBN 111282
Mark Potter, Esq., SBN 166317
Phyl Grace, Esq., SBN 171771
Dennis Price, SBN 279082
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Gary Scherer,
Plaintiff,

v.

Emrith Water Ngor, Trustee of the
Ngor Revocable Living Trust Dated
November 30, 2004;
Siv Hun Lo Ngor, Trustee of the
Ngor Revocable Living Trust Dated
November 30, 2004;
Boun, Inc., a California
Corporation;
and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act.**

Plaintiff Gary Scherer complains of Emrith Water Ngor; Siv Hun Lo Ngor; Boun, Inc.; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from a form of ataxia that significantly impairs his mobility, and uses a wheelchair for mobility.

1 2. Defendant Emrith Water Ngor was a real property owner of the
2 building/parcel located at or about 7400 Van Nuys Blvd., Ste. 104, Van Nuys,
3 California, in May 2015.

4 3. Defendant Emrith Water Ngor is a real property owner of the
5 building/parcel located at or about 7400 Van Nuys Blvd., Ste. 104, Van Nuys,
6 California, currently.

7 4. Defendant Siv Hun Lo Ngor was a real property owner of the
8 building/parcel located at or about 7400 Van Nuys Blvd., Ste. 104, Van Nuys,
9 California, in May 2015.

10 5. Defendant Siv Hun Lo Ngor is a real property owner of the
11 building/parcel located at or about 7400 Van Nuys Blvd., Ste. 104, Van Nuys,
12 California, currently.

13 6. Defendant Boun, Inc. was the business owner of OK Chinese
14 Restaurant, located at or about 7400 Van Nuys Blvd., Ste. 104, Van Nuys,
15 California (hereinafter "OK Chinese"), in May 2015.

16 7. Defendant Boun, Inc. is the business owner of OK Chinese currently.

17 8. Plaintiff does not know the true names of Defendants, their business
18 capacities, their ownership connection to the property and business, or their
19 relative responsibilities in causing the access violations herein complained of,
20 and alleges a joint venture and common enterprise by all such Defendants.
21 Plaintiff is informed and believes that each of the Defendants herein,
22 including Does 1 through 10, inclusive, is responsible in some capacity for the
23 events herein alleged, or is a necessary party for obtaining appropriate relief.
24 Plaintiff will seek leave to amend when the true names, capacities,
25 connections, and responsibilities of the Defendants and Does 1 through 10,
26 inclusive, are ascertained.

JURISDICTION & VENUE:

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

10. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

12. OK Chinese is a facility open to the public, a place of public accommodation, and a business establishment.

13. Parking spaces are one of the facilities, privileges and advantages offered by Defendants to patrons of OK Chinese.

14. Unfortunately, the parking spaces serving OK Chinese are not accessible to persons with disabilities.

15. In May 2015, the parking spaces at OK Chinese designated for use by persons with disabilities were not in compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

16. In May 2015, the parking spaces designated for use by persons with disabilities measured less than 216 inches in length.

17. In May 2015, the access aisles serving the parking spaces designated for use by persons with disabilities measured less than 216 inches in length.

18. Currently, the parking spaces at OK Chinese designated for use by persons with disabilities are not in compliance with the ADAAG.

1 19. Currently, the parking spaces designated for use by persons with
2 disabilities measure less than 216 inches in length.

3 20. Currently, the access aisles serving the parking spaces designated for
4 use by persons with disabilities measure less than 216 inches in length.

5 21. Paths of travel are another one of the facilities, privileges and
6 advantages offered by Defendants to patrons of OK Chinese.

7 22. In May 2015, there was no accessible path of travel to the restroom at
8 OK Chinese.

9 23. In May 2015, the path of travel to the restroom at OK Chinese was
10 blocked by cleaning equipment and supplies.

11 24. In May 2015, the path of travel to the restroom at OK Chinese was less
12 than 36 inches in width.

13 25. In May 2015, the path of travel to the restroom at OK Chinese was not
14 passable by wheelchair users.

15 26. Currently, there is no accessible path of travel to the restroom at OK
16 Chinese.

17 27. Currently, the path of travel to the restroom at OK Chinese is blocked by
18 cleaning equipment and supplies.

19 28. Currently, the path of travel to the restroom at OK Chinese is less than
20 36 inches in width.

21 29. Currently, the path of travel to the restroom at OK Chinese is not
22 passable by wheelchair users.

23 30. Plaintiff visited OK Chinese in May 2015.

24 31. The plaintiff personally encountered these violations and they denied
25 him full and equal access and caused him great difficulty and frustration.

26 32. Restrooms are one of the facilities, privileges and advantages offered by
27 Defendants to patrons of OK Chinese.

28 33. Because of the inaccessible path of travel to the restroom, Plaintiff was

1 unable to use the restroom facilities in May 2015 and did not personally
2 confront the barriers within. Nevertheless, Plaintiff alleges that the restroom
3 at OK Chinese is inaccessible to persons with disabilities.

4 34. In May 2015, the restroom door hardware at OK Chinese was a
5 traditional knob style handle that required tight grasping and twisting of the
6 wrist to operate.

7 35. In May 2015, the plumbing underneath the sink in the restroom at OK
8 Chinese was not wrapped to protect against burning contact.

9 36. In May 2015, the restroom mirror at OK Chinese was mounted on the
10 wall so that its bottom edge was higher than 40 inches above the finish floor.

11 37. In May 2015, the restroom sink at OK Chinese was mounted such that
12 the counter or rim was higher than 34 inches above the finish floor.

13 38. In May 2015, cleaning equipment and supplies were stored inside the
14 restroom at OK Chinese, restricting clear floor space.

15 39. In May 2015, the restroom at OK Chinese did not provide a 60 inch
16 diameter turning radius.

17 40. In May 2015, there was no clear floor space in front of the paper towel
18 dispenser because it was mounted on the wall behind the toilet in the restroom
19 at OK Chinese.

20 41. Currently, the restroom door hardware at OK Chinese is a traditional
21 knob style handle that requires tight grasping and twisting of the wrist to
22 operate.

23 42. Currently, the plumbing underneath the sink in the restroom at OK
24 Chinese is not wrapped to protect against burning contact.

25 43. Currently, the restroom mirror at OK Chinese is mounted on the wall so
26 that its bottom edge is higher than 40 inches above the finish floor.

27 44. Currently, the restroom sink at OK Chinese is mounted such that the
28 counter or rim is higher than 34 inches above the finish floor.

1 45. Currently, cleaning equipment and supplies are stored inside the
2 restroom at OK Chinese, restricting clear floor space.

3 46. Currently, the restroom at OK Chinese does not provide a 60 inch
4 diameter turning radius.

5 47. Currently, there is no clear floor space in front of the paper towel
6 dispenser because it is mounted on the wall behind the toilet in the restroom
7 at OK Chinese.

8 48. Additionally, although Plaintiff did not personally confront the
9 following barriers, Plaintiff alleges that the upper level parking spaces at OK
10 Chinese are inaccessible to wheelchair users.

11 49. In May 2015, the van accessible parking space in the upper parking lot
12 did not have an eight foot access aisle.

13 50. Currently, the van accessible parking space in the upper parking lot does
14 not have an eight foot access aisle.

15 51. Also, in May 2015, the path of travel from the upper level parking
16 required a person to navigate a set of steps for which there was no useable lift
17 or elevator.

18 52. Currently, the path of travel from the upper level parking requires a
19 person to navigate a set of steps for which there was no useable lift or elevator.

20 53. Plaintiff would like to return and patronize OK Chinese but will be
21 deterred from visiting until the defendants cure the violations.

22 54. The violations identified above are easily removed without much
23 difficulty or expense. They are the types of barriers identified by the
24 Department of Justice as presumably readily achievable to remove and, in fact,
25 these barriers are readily achievable to remove. Moreover, there are numerous
26 alternative accommodations that could be made to provide a greater level of
27 access if complete removal were not achievable.

28 55. Additionally, on information and belief, the plaintiff alleges that the

1 failure to remove these barriers was intentional because: (1) these particular
2 barriers are intuitive and obvious; (2) the defendants exercised control and
3 dominion over the conditions at this location and, therefore, the lack of
4 accessible facilities was not an “accident” because, had the defendants
5 intended any other configuration, they had the means and ability to make the
6 change.

7 56. Given the obvious and blatant violations, the plaintiff alleges, on
8 information and belief, that there are other violations and barriers on the site
9 that relate to his disability. Plaintiff will amend the Complaint to provide
10 proper notice regarding the scope of this lawsuit once he conducts a site
11 inspection. However, please be on notice that the plaintiff seeks to have all
12 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
13 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
14 he can sue to have all barriers that relate to his disability removed regardless of
15 whether he personally encountered them).

16 57. Plaintiff is and has been deterred from returning and patronizing OK
17 Chinese because of his knowledge of the illegal barriers that exist. Plaintiff
18 will, nonetheless, return to the restaurant to assess ongoing compliance with
19 the ADA and will return to patronize OK Chinese as a customer once the
20 barriers are removed

21
22 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
23 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
24 Defendants.) (42 U.S.C. section 12101, et seq.)

25 58. Plaintiff re-pleads and incorporates by reference, as if fully set forth
26 again herein, the allegations contained in all prior paragraphs of this
27 complaint.

28 59. Under the ADA, it is an act of discrimination to fail to ensure that the

1 privileges, advantages, accommodations, facilities, goods and services of any
 2 place of public accommodation is offered on a full and equal basis by anyone
 3 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 4 § 12182(a). Discrimination is defined, inter alia, as follows:

- 5 a. A failure to make reasonable modifications in policies, practices,
 6 or procedures, when such modifications are necessary to afford
 7 goods, services, facilities, privileges, advantages, or
 8 accommodations to individuals with disabilities, unless the
 9 accommodation would work a fundamental alteration of those
 10 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 11 b. A failure to remove architectural barriers where such removal is
 12 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 13 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
 14 Appendix “D.”
- 15 c. A failure to make alterations in such a manner that, to the
 16 maximum extent feasible, the altered portions of the facility are
 17 readily accessible to and usable by individuals with disabilities,
 18 including individuals who use wheelchairs or to ensure that, to the
 19 maximum extent feasible, the path of travel to the altered area and
 20 the bathrooms, telephones, and drinking fountains serving the
 21 altered area, are readily accessible to and usable by individuals
 22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 Any business that provides parking spaces must provide accessible parking
 24 spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify as a
 25 reserved handicap parking space, the space must be properly marked and
 26 designated. Under the ADA, the method, color of marking, and length of the
 27 parking space are to be addressed by state or local laws or regulations. See 36
 28 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly

1 and effectively reserve a parking space for persons with disabilities, each
2 parking space must be at least 216 inches in length. CBC § 11B-502.2. The
3 access aisle must extend the full length of the parking spaces it serves. Id. at §
4 502.3.2.

5 60. Here, the failure to provide parking and access aisles that met the
6 required length is a violation of the ADA.

7 61. There must be an accessible path of travel that connects all buildings,
8 elements and spaces on the same site. 1991 Standards § 4.3.2. The minimum
9 clear width of an accessible route shall be 36 inches. 1991 Standards § 4.3.3.

10 62. Here, the path of travel to the restroom is less than 36 inches. It is
11 blocked by cleaning equipment, supplies and other items that are stored there.

12 63. Here, the failure to provide a path of travel that allows disabled persons
13 access to the restroom is a violation of the ADA.

14 64. Restroom door hardware must have handles and other operating
15 devices that have a shape that is easy to use with one hand and does not require
16 tight grasping, tight pinching, or twisting of the wrist to operate. 1991
17 Standards § 4.23.2; 4.13.9; 2010 Standards § 404.2.7; 309.4.

18 65. Here, the failure to provide accessible restroom door hardware is a
19 violation of the ADA.

20 66. Hot water and drain pipes under lavatories must be insulated or
21 otherwise configured to protect against contact. 1991 Standards § 4.19.4;
22 2010 Standards § 606.5.

23 67. Here, the failure to wrap the plumbing underneath the sink is a violation
24 of the ADA.

25 68. Mirrors shall be mounted with the bottom edge of the reflecting surface
26 no higher than 40 inches above the finish floor. 1991 Standards § 4.19.6;
27 2010 Standards § 603.3.

28 69. Here, the mirror was mounted higher than the maximum permitted and

1 is a violation of the ADA.

2 70. Sinks must be mounted so that the counter or rim is no higher than 34
3 inches above the finish floor. 1991 Standards § 4.24.2; 2010 Standards §
4 606.3.

5 71. Here, the counter/rim of the restroom sink was higher than 34 inches
6 above the finish floor, in violation of the ADA.

7 72. In order for a bathroom to be considered accessible, it must provide
8 unobstructed 60 inches in diameter of turning space. 1991 Standards §
9 4.23.3; 4.2.3; 2010 Standards § 603.2.1; 304.3.1.

10 73. Here, there is no such turning radius due obstructed clear floor space.
11 As such, the restroom is not accessible and violates the ADA.

12 74. Clear floor space that allows a forward or a parallel approach by a person
13 using a wheelchair shall be provided at controls, dispensers, receptacles, and
14 other operable equipment. 1991 Standards § 4.27.2; 2010 Standards § 309.2.

15 75. Here, the failure to provide such floor space is a violation of the ADA.

16 76. Each accessible parking stall must have an access aisle adjacent to it.
17 Standard accessible parking stalls can have a 60 inch wide access aisle while
18 van accessible stalls must have a 96 inch wide access aisle. 1991 Standards §
19 4.1.2(5)(a)&(b) and 2010 Standards § 502.2.

20 77. Here, the van accessible parking space in the upper level parking lot does
21 not have a 96 inch wide access aisle, in violation of the ADA.

22 78. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 79. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the ADA.

27 80. Given its location and options, OK Chinese is a business that the
28 plaintiff will continue to desire to patronize, but he has been and will continue

1 to be discriminated against due to the lack of accessible facilities.

2
3 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
4 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
5 Code § 51-53.)

6 81. Plaintiff re-pleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 82. Because the defendants violated the plaintiff's rights under the ADA,
10 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
11 Civ. Code § 51(f), 52(a).)

12 83. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
13 discomfort or embarrassment for the plaintiff, the defendants are also each
14 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §
15 55.56(a)-(c).)

16
17 **PRAYER:**

18 Wherefore, Plaintiff prays that this Court award damages and provide
19 relief as follows:

20 1. For injunctive relief, compelling Defendants to comply with the
21 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
22 plaintiff is not invoking section 55 of the California Civil Code and is not
23 seeking injunctive relief under the Disabled Persons Act at all.

24 2. Damages under the Unruh Civil Rights Act, which provides for actual
25 damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: February 11, 2016

CENTER FOR DISABILITY ACCESS

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6 By: 
7 Mark Potter, Esq.
8 Attorneys for Plaintiff
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